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No. 458

In the Supreme Court of the United States

OCTOBER TERM, 1942

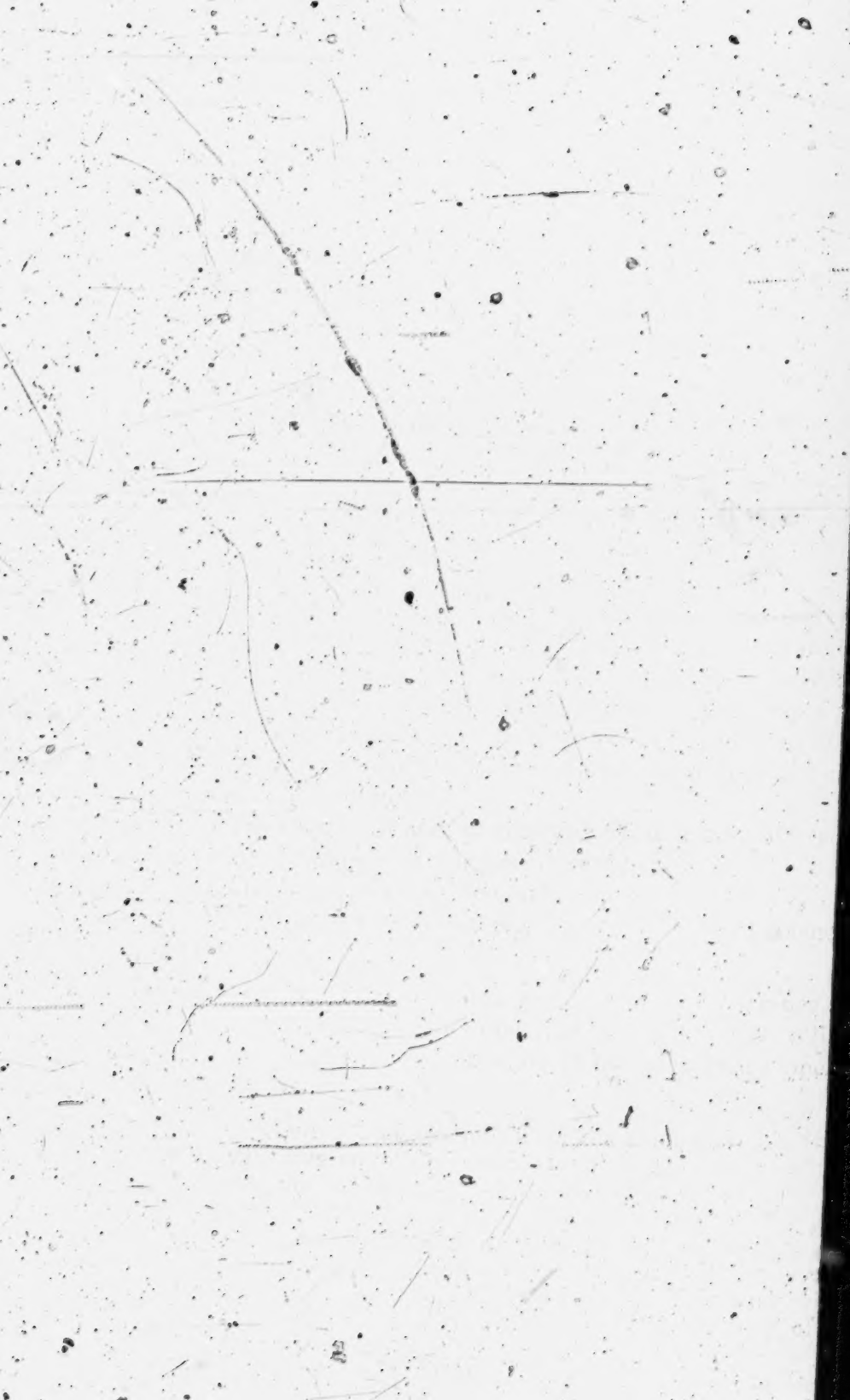
GEORGE SYLVESTER VIERECK, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

APPENDICES TO THE BRIEF FOR THE UNITED STATES



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APPENDIX A

STATUTES INVOLVED

The Act of June 8, 1938, c. 327 (52 Stat. 631), entitled "AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), U. S. C., Title 22, §§ 611–616, provided:

That as used in this Act—

(a) The term "person" means an individual, partnership, association, or corporation;

(b) The term "United States" includes the United States and any place subject to the jurisdiction thereof;

(c) The term "foreign principal" includes the government of a foreign country, a political party of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation, or political organization, or a domestic organization subsidized, directly or indirectly, in whole or in part by any of the entities described herein;

(d) The term "agent of a foreign principal" means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives compensation from or is under the direction of a foreign principal: *Provided, however,* That such term shall not include—

(1) a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States; nor

(2) any official of a foreign government recognized by the United States as a government other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States; nor

(3) any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States; nor

(4) any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal; nor

(5) any person engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.

(e) The term "Secretary" means the Secretary of State of the United States.

SEC. 2. Every person who is now an agent of a foreign principal shall, within thirty days after this Act takes effect, and every person who shall hereafter become an agent of a foreign principal shall forthwith file with the Secretary a registra-

tion statement, under oath, on a form prescribed by the Secretary which shall set forth—

(a) The name, business address, and residence address of the registrant;

(b) The name of the foreign principal or other person or organization for which such person is acting as agent;

(c) A copy of all contracts of employment under which such person acts or agrees to act as such agent, if written, or a full statement of the terms and conditions thereof, if oral;

(d) The date when each such contract was made, the date of commencement of activity thereunder, and the period during which such contract is to be in effect;

(e) The compensation to be paid, if any, and the form and time of payment, under such contract;

(f) The name of every foreign principal, or other person or organization which has contributed or which has promised to contribute to the compensation provided in such contract; and

(g) If the registrant be a partnership, association, or corporation, a true and complete copy of its charter, articles of incorporation, copartnership, association, constitution, and bylaws, and any other instrument or instruments relating to its organization, powers, and purposes.

SEC. 3. Every person who has filed a registration statement required by section 2 shall, within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement under oath, on a form prescribed by the Secretary which shall set forth with respect to such preceding six months' period—

(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period;

(b) The amount and form of compensation received by such person for acting as agent for a foreign principal which has been received during such six months' period either directly or indirectly from any foreign principal; and

(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period.

SEC. 4. The Secretary shall retain in permanent form all statements filed under this Act, and such statements shall be public records and open to public examination and inspection at all reasonable hours, under such rules and regulations as the Secretary may prescribe: *Provided,* That the Secretary is hereby authorized to withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of this Act.

SEC. 5. Any person who willfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or willfully omits to state any material fact required to be stated therein shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both.

SEC. 6. The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act.

SEC. 7. This Act shall take effect on the ninetieth day after the date of its enactment.

The Act of April 29, 1942 (Pub. 532, 77th Cong., ch. 263, 2d sess. [S. 2399]) provides, in part:

SEC. 2 (a) * * * The registration statement shall include the following, which shall be regarded as material for the purposes of this Act:

* * * * * *

(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each, unless, and to the extent, this requirement is waived in writing by the Attorney General; the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party;

* * * * * *

(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder;

* * * * * *

APPENDIX B

RULES AND REGULATIONS INVOLVED

Under the authority of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), U. S. C., Title 22, §§ 611–616, the Secretary of State prescribed the following regulations on September 15, 1939:

PART I

Registration of Agents of Foreign Principals.

Chapter I—Authority

[The statute involved is set forth, *supra*, pp. 1–5.]

Under the authority of the aforementioned provisions of law and in compliance therewith, the Secretary of State prescribes the following regulations:

Chapter II—Definitions

As used in these regulations and forms, unless the context otherwise requires—

(1) The term *person* means an individual, partnership, association, or corporation.

(2) The term *Secretary* means the Secretary of State of the United States.

(3) The term *act* means the act approved June 8, 1938 (Public, No. 583, 75th Cong., 3d sess.), entitled "AN ACT To require the registration of cer-

tain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the act approved August 7, 1939 (Public, No. 319, 76th Cong., 1st sess.).

(4) The term *section* means a section of the act.

(5) The term *regulations* means all rules, regulations, and forms prescribed by the Secretary pursuant to the act.

(6) The term *government of a foreign country* means any person or group of persons exercising sovereign political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which authority or functions are directly or indirectly delegated or permitted. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority, whether such faction or body of insurgents has or has not been recognized by the United States.

(7) The term *political party of a foreign country* means any group of persons in a country other than the United States, having for an aim the establishment or the administration of a government or of a governmental system.

(8) The term *person domiciled abroad* means a person who has outside the United States a principal establishment or permanent home.

(9) The term *foreign business* means any entity organized or set up under a jurisdiction of a country other than the United States and having its principal place of business outside the United States, for the purpose of livelihood or profit.

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(10) The term *foreign partnership* means an association of two or more persons formed outside the United States to engage jointly in any enterprise or undertaking.

(11) The term *foreign association* means an unincorporated entity or group of persons formed outside the United States and acting for a common purpose.

(12) The term *foreign corporation* means a legal entity created by or under the laws of a country other than the United States.

(13) The term *foreign political organization* means a group of persons organized and existing outside the United States which is engaged in political activity or in any activity devoted in whole or in part to the establishment or the administration of a government or of a governmental system.

(14) The term *public-relations counsel* means any person who directly or indirectly informs, advises, or in any other way represents a principal in any matters pertaining to political interests or public relations or public policy: ***Provided, however,*** That this term shall not be held to apply to any person by reason of his being engaged in bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(15) The term *publicity agent* means any person who is directly or indirectly engaged in the placing or disseminating within the United States of oral,

written, or pictorial information or matter of any kind for publication in any manner, including publication through advertising, books, periodicals, newspapers, lectures, broadcasts, moving-picture showings, or otherwise: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in the dissemination of material, information, or ideas in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(16) The term *duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United Staes* shall include any representaive of a foreign government who functions as a diplomatic or consular officer in the United States and whose diplomatic or consular status is of record in the Department of State of the United States.

(17) The term *private activities in furtherance of bona fide trade or commerce* means activities ordinarily and customarily performed by persons for private livelihood or profit, as distinguished from activities of a political or other character, whether or not in the guise of trade or commerce.

(18) The term *nonpolitical activities in furtherance of bona fide trade or commerce* means such activities as are religious, educational, professional, scientific, or related to the fine arts, which do not in any essential respect relate to the establishment or

conduct of a government or relations between one government and another.

(19) The term *financial activities in furtherance of bona fide trade or commerce* means activities in which exchange of money or its equivalent is involved through the normal channels of finance, and includes the normal incidents of such transactions.

(20) The term *mercantile activities in furtherance of bona fide trade or commerce* means activities directly concerned with the business of procuring, buying, selling, merchandising, warehousing, forwarding, transporting, or processing goods, products, or property of any kind.

(21) The term *other activities in furtherance of bona fide trade or commerce* as used in subsection (d) of the first section of the act, means services rendered in connection with private activities, nonpolitical activities, financial activities, or mercantile activities as herein defined.

(22) The term *furtherance of bona fide trade or commerce* means engaging in good faith in the lawful exchange of commodities, services, or property of any kind. Such term shall not include any political activities or activities involving the dissemination of information not exclusively concerned with the lawful exchange of commodities, services, or property.

(23) The term *registration statement* means the statement submitted to the Secretary for filing pursuant to the terms of the act and includes all documents and papers supplementary thereto.

(24) The term *registrant* means the person named in the registration statement and in whose behalf the registration statement is submitted to the Secretary for filing.

Chapter III—Outline of Act

The act requires the registration of:

any person who *acts* or *engages to act* or *agrees to act* as:

- public-relations counsel,
- publicity agent,
- agent,
- servant,
- representative,
- attorney for, or

any person who receives compensation from, or is under the direction of:

- the government of a foreign country,
- a political party of a foreign country,
- a person domiciled abroad,
- a foreign business,
- a foreign partnership,
- a foreign association,
- a foreign corporation,
- a foreign political organization or a domestic organization subsidized directly or indirectly in whole or in part by any of the above.

The *only* persons within these categories exempt from the requirement of registration under the act are:

persons who function in the United States as diplomatic or consular officers and whose diplomatic or consular status is of record in the Department of State of the United States,

persons performing only:

- private activities in furtherance of bona fide trade or commerce,
- nonpolitical activities in furtherance of bona fide trade or commerce,
- financial activities in furtherance of bona fide trade or commerce,

mercantile activities in furtherance of bona fide trade or commerce,
other activities in furtherance of bona fide trade or commerce, or
activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits, or of the fine arts,

and persons whose status is described in either of the following two paragraphs:

(1) Any official of a foreign government recognized by the United States as a government, other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States.

(2) Any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States.

Chapter IV—Section 2 of the Act

(1) Every person required to register under the terms of section 2 of the act and regulations issued pursuant thereto, shall submit to the Secretary a registration statement on a form similar to that printed below. Registration statements must be signed and sworn to before a notary public or other person authorized by law to administer oaths before they are transmitted to the Secretary of State.

Blank forms will be furnished by the Secretary upon request.

[Form of Registration Statement appears at pp. 20–23 of the Record.]

(2) Registration statements should be in English. In a foreign language, they must be accompanied by an English translation, certified under oath by the translator, before a notary public or other person authorized by law to administer oaths for general purposes, as a true and accurate translation. The statements, with the exception of signature, should be typewritten but will be accepted if written legibly in ink.

(3) All spaces in the registration statement form must be properly filled in. Registration statements found not to be in proper form or lacking in essential details will not be accepted by the Secretary for filing, and such registration statements shall not be deemed to have been filed in compliance with the act.

(4) Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.

(5) Acceptance by the Secretary of a registration statement submitted for filing shall not necessarily signify a full compliance with the act on the part of the registrant, and such acceptance shall not preclude prosecution as provided for in the act

for a false statement of a material fact or the willful omission of a material fact required to be stated therein.

(6) The date on which a registration statement, executed in full compliance with the act and regulations, is received by the Secretary for filing, shall be considered the date of the filing of such registration statement pursuant to the act.

(7) Papers and documents already filed with the Secretary pursuant to the act may be incorporated by reference in any registration statement subsequently submitted to the Secretary for filing, provided such papers and documents are adequately identified in the registration statement in which they are incorporated by reference.

(8) Every registration statement executed and submitted to the Secretary by or on behalf of a partnership, association, or corporation, shall contain or be accompanied by a concise statement of the applicable provisions of the partnership agreement, articles of incorporation, bylaws or similar documents, indicating the right of the person who signs and submits the registration statement for filing to take such action on behalf of the partnership, association, or corporation, and a statement under oath that all such requirements have been complied with and that the person signing and submitting the registration statement is fully authorized to do so.

(9) A separate registration statement, under the act, must be filed with the Secretary by each person required to register.

(10) The Secretary should be notified promptly upon the cessation of the agency or activity by virtue of which a person has been required to file a

registration statement or submit information to the Secretary pursuant to the act and regulations prescribed thereunder.

(11) The filing of a registration statement by a partnership, association, or corporation shall not preclude the necessity of the filing of a similar registration statement, as required under the act, by such individual members, employees, associates, and affiliates of such registrant, as are required to register under the act.

(12) Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration.

(13) Registration pursuant to the act is required in the case of agents of foreign principals only. Subagents are not considered subject to the requirement of registration. A subagent is considered to be a person who is not engaged in any activities of a responsible character and who acts under the immediate and direct supervision of a registered agent or whose name, address, and functions are set forth in the registration statement submitted by the agent.

(14) Branch offices or subsidiaries of a registrant engaged in the same activity as that of such registrant will not be required to file separate registration statements if their names and addresses are included in the registration statement filed by the registrant pursuant to the act.

(15) Subsidiary or branch agencies of foreign entities in the United States are considered as occupying a dual status, i. e., that of a foreign prin-

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cipal and that of an agent of a foreign principal, and hence in their latter capacity are required to register if engaged in activities of a character not specifically excepted by the terms of the act and regulations. Officers of such agencies, however, need not register if their names and positions are indicated in the registration statement submitted by the agency.

(16) Associations and organizations, the membership of which includes one or more foreign principals, shall, to the extent of such foreign membership, be considered agents of foreign principals, and hence subject to the requirement of registration pursuant to the act unless their activities are of a character specifically excepted by the terms of the act and regulations.

(17) Activities connected in any way with the establishment or conduct of a foreign government shall not be considered to fall within any of the exceptions described in paragraphs (14) to (22), inclusive, of chapter II, part I, of the regulations, and persons undertaking to engage in such activities shall be considered subject to the requirement of registration.

(18) The status of officials of foreign governments and members of the staff of or persons employed by duly accredited diplomatic or consular officers of foreign governments, claiming exemption from the requirement of registration under the provisions of the first section of the act, should be regularized by a notification addressed to the Secretary of State. Such notification must include the full name, nationality, business and residence addresses of the person claiming exemption from the requirement of registration under the act, to-

gether with the name of the foreign government being served, a detailed statement of the present and proposed activities of such person, and an indication of the date of assumption of duties in the United States and the approximate duration thereof.

(19) Notification under paragraph (18) above must be renewed whenever the purpose, scope, or nature of the agency described therein is changed, and in any case every 12 months throughout the duration of the agency.

(20) Persons who have submitted information in full compilance with the provisions of paragraph (18) above, shall be considered to have complied with the provisions of the act of June 15, 1917 (40 Stat. 226; 22 U. S. C. 233), so far as such provisions relate to the requirement of notification to the Secretary of certain agents of foreign governments in the United States.

(21) The Secretary of State should be informed promptly upon the termination of activities described in notifications submitted pursuant to the provisions of paragraph (18) above.

(22) The Secretary may withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of the act. Requests for such withdrawals shall be submitted to the Secretary in the form of an affidavit subscribed and sworn to before a notary public, identifying the registration statement, the withdrawal of which is desired, and stating that the agency relationship described therein has been terminated and that the activities of the registrant

under such agency relationship have ceased. Registration statements which are withdrawn from the public records under the provisions hereof will be retained in the permanent files of the Department of State.

Chapter V—Section 3 of the Act

(1) Every person required to submit statements to the Secretary for filing in compliance with the terms of section 3 of the act and under the regulations issued pursuant to the act shall submit such statements under oath on a form similar to that printed below. Blank forms will be furnished by the Secretary upon request.

(2) The regulations set forth under chapter IV, part I, hereof, with respect to registration statements submitted to the Secretary under section 2 of the act, shall apply with equal force and effect to statements required to be submitted to the Secretary for filing under section 3 of the act.

[Form of Supplemental Registration Statement appears at pp. 26–30 of the Record.]

Chapter VI—Inspection of Registration Statements

(1) Registration statements filed with the Secretary pursuant to the act will, with the exception of statements withdrawn under the provisions of paragraph (22), chapter IV, part I, above, be available for public inspection in the Department of State, Washington, D. C., during all business hours, i. e., from 9 a. m. to 4:30 p. m. on each business day excepting Saturday, and from 9 a. m. to 1 p. m. on Saturdays.

APPENDIX C

CHARGE TO THE JURY

(Tr. 1570–1616)

THE COURT: Ladies and gentlemen of the jury, in the consideration of the indictment and of the several counts thereof, we are concerned with an Act of Congress commonly known as the "McCormick Act." It may be helpful for the jury for me to make brief reference to the legislative history of that Act, the Act which is here involved.

The House of Representatives in the 73rd Congress passed a House Resolution which has pertinence here:

> *Resolved,* That the Speaker of the House of Representatives be and is hereby authorized to appoint a special committee to be composed of seven members for the purpose of conducting an investigation of;
>
> 1. The extent, character and object of Nazi propaganda activities in the United States.
>
> 2. The diffusion within the United States of subversive propaganda that is instigated from foreign countries and attacks the principles of the form of Government as guaranteed by our Constitution. And,
>
> 3. All other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The special committee appointed by the Speaker of the House of Representatives, by name known

as the "McCormick Committee"—the committee taking the name of its chairman—after extensive hearings which are reported in many pages of testimony before the McCormick Committee, that committee after investigating over nine months in its final report dated February 15, 1935, found that this country, "has been flooded with propaganda material and that such propaganda literature from various alien organizations outside of the United States which were engaged in un-American propaganda activity in an effort to gain adherence and to influence the political opinions of many of our people, and also to influence, if necessary and possible our Government policies."

It further found that all kinds of efforts and influences short of violence and force were used by foreign Governments and their various agencies to obtain their desired objective, which was to consolidate persons into one group subject to dictation from abroad, in distinct violation of every known American principle.

Furthermore, according to the McCormick Committee this foreign political propaganda was not directed merely at adults, but also at children who were taught to believe that the principles of Government taught by the foreign dictators were superior to the principle of our Government.

Moreover, the committee found that American firms and American citizens as individuals, sold their services for express propaganda purposes making their contacts with and accepting compensation from business firms.

The McCormick Act with which we are now concerned was the result of the public hearing and

the recommendations of the McCormick Committee, and was designed to remedy some of the ills which that committee had reported to the House of Representatives.

The purpose of the legislation was to require unknown agencies who are in the United States for propaganda purposes to register with the Secretary of State. It was intended that the legislation should relate to political propaganda, to persons who were engaged by a foreign company, foreign agents or connected with a foreign government engaged in political propaganda, and to those who are engaged in propaganda in this country connected with some particular country or political party of a country, or some firm, some group of business of the particular country who is using this as a means for that particular country or political party to hide its identity.

The committee maintained that the Congress and the people of the United States are entitled to have notice of any person who is in the United States or who employs any person for the purpose of disseminating political propaganda in the United States.

The committee sought through its Bill to determine through the instrumentality of registration with the Secretary of State, those activities of persons who are engaged by a foreign government directly or indirectly, to advise them on what methods or what is the best method to employ public propaganda, or who are engaged for the purpose of disseminating political propaganda in the United States.

It was the purpose of Congress to bring out in the open information as to who is disseminating

political propaganda in the United States, the purposes of such propaganda information which the Congress thought the American public is entitled to have.

The Bill as enacted into law was designed to accomplish the ends and aims of the McCormick Committee.

You are now told as a matter of law that through the passage of the McCormick Act the Congress sought to force propagandist agents representing foreign principals to come out in the open in their activity; to make known to the American public those who are so engaged in this country by foreign agencies, to spread doctrines alien to our Democratic form of Government; to make known to the American public the sources of any such efforts; the sources that promote and pay for the spreading of such foreign propaganda, and to label the sources of such propaganda; to publicize the nature of a subversive or other similar activity of such foreign propaganda; to deter the spread of such pernicious propaganda by the spotlight of publicity resulting from the registration with the Secretary of State.

In seeking to attain these ends it was the intent of Congress, therefore, that the following persons should be required to register with the State Department and to supply information about their political propaganda activities, their employers and the terms of their contract. All persons who are in the United States for political propaganda purposes; aliens coming to or in the United States for propaganda purposes of a political nature; American citizens who accept foreign political propaganda employment.

You are further told as a matter of law that the terms "Foreign Political Propaganda, propaganda purposes of a political nature and political propaganda, mean propaganda aimed toward establishing in the United States a foreign system of Government, group action of a nature foreign to our institutions of Government; propaganda for the purpose of influencing American public opinion on a political question.

Futhermore, propaganda and foreign propaganda are implicitly defined as spreading doctrines alien to our Democratic form of Government; spreading by word of mouth or by the written words the ideology, the principles and the practices of other forms of Government and the things for which they stand, arbitrarily aiming to inculcate persons in the United States with those principles and teachings which seek to foster un-American activity; to influence the external and internal policies of this country and to violate the letter and the spirit of the International Law, as well as the Democratic basis of our own American Institution of Government.

Accordingly, it is clearly apparent from the foregoing legislative history what types of activity the Congress intended should be made public information through the medium of registration.

It stands without dispute in the evidence that on September 26, 1939, the defendant, George Sylvester Viereck, filed a registration statement with the Secretary of State as the agent of certain foreign principals.

Section 3 of the Act provides, "That every person who has filed a registration statement required

by the Act shall, within 30 days after the expiration of each period of 6 months succeeding the first filing, file with the Secretary of State a statement under oath on a form prescribed by the Secretary, which shall set forth with respect to such preceding 6 months' period, such facts as may be necessary to make the information required by the Act accurate and current with respect to such period; a statement containing such details required under the Act as the Secretary shall fix of the activities of such person or agent of a foreign principal during such 6 months' period."

Section 4 of the Act provides that "The Secretary shall retain in permanent form all statements filed under the Act, and that such statements shall be public records and open to public examination and inspection at all times at reasonable hours."

Section 6 of the Act provides that "The Secretary is authorized and directed to prescribe such regulations and forms as may be necessary to carry out the Act."

By the form prescribed by the Secretary for supplemental statements, the registrant is required to make a comprehensive statement of the nature of his business.

Section 5 of the Act provides that, "Any person who willfully fails to file any statement required to be filed under the Act or in complying with the provisions of the Act makes a false statement of a material fact or willfully omits to state any material fact required to be stated therein, shall be punished."

The indictment in this case is in five counts, but you are advised that the trial has proceeded upon

three counts only, they being count 2, count 3 and count 5. You will give no concern to the charges contained in counts 1 and 4.

You are further told, that counts 2, 3, and 5 relate to supplemental statements filed by the defendant on April 23, 1940; October 25, 1940 and April 25, 1941.

In count 2 it is charged that the defendant George Sylvester Viereck unlawfully, willfully, and knowingly omitted to state and set forth in his supplemental statement filed on April 23, 1940, a material fact; that during the period from September 26, 1939, to April 23, 1940, as a part of his business and activities, the defendant:

Advised, consulted, and informed, directly and indirectly, divers persons in matters pertaining to political interests, public relations and public policy; and

Engaged, directly and indirectly, in placing and disseminating within the United States of oral and written information and matter for publication by writing, editing, preparing and revising speeches, public addresses and written matter pertaining to political interests, public relations and public policy, and which were thereafter printed and published in whole and in part in books, periodicals, and newspapers and in the Congressional Record, and also were disseminated by means of radio broadcasts; and

Advised, consulted, and informed, directly and indirectly, one Prescott Dennett, and divers other persons, in matters pertaining to political interests, public relations and public policy, aiding, abetting and assisting the said Prescott Dennett and

divers other persons, in organizing and setting up a certain committee known as and by the name and style of "Make Europe Pay War Debts Committee," and by contributing large sums of money for the maintenance of and to defray the expenses of the said committee, it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee," the said Prescott Dennett and divers other persons, to disseminate, distribute and place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matters pertaining to political interests, public relations and public policy; and

Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writers.

Count 3 charges that in his supplemental statement filed October 25, 1940, the defendant unlawfully, willfully, feloniously and knowingly omitted to state and set forth in said supplemental registration statement a material fact; that during the period from April 23, 1940, to October 25, 1940, the defendant:

Advised, consulted and informed, directly and indirectly, divers persons in matters pertaining to political interests, public relations and public policy; and

Engaged, directly and indirectly, in the placing and disseminating within the United States of oral and written information and matter for publication in that, among other things, the said defendant, George Sylvester Viereck, wrote, edited, prepared, and revised speeches, public addresses and written matter pertaining to political interests, public relations and public policy, and which were thereafter printed and published in whole and in part in the Congressional Record and other books, periodicals and newspapers, and also were disseminated by means of radio broadcasts; and

Advised, consulted, and informed, directly and indirectly, one Prescott Dennett, and divers other persons, in matters pertaining to political interests, public relations and public policy by aiding, abetting and assisting the said Prescott Dennett and divers other persons in the operation and work of certain committees known as and by the name and style of "Make Europe Pay War Debts Committee" and "Island for War Debts Committee" and by contributing large sums of money for the maintenance of and to defray the expenses of the said committees, it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee" and the said "Islands for War Debts Committee" the said Prescott Dennett and divers other persons to disseminate, distribute by mail under Congressional franking privilege and otherwise

certain speeches and public addresses delivered on the floor of Congress and elsewhere by present and former members of both houses of the Congress of the United States, and to place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matter pertaining to political interests, public relations, and public policy; and

Engaged, directly and indirectly, within the United States of America, in the distributing, disseminating and placing of oral and written information and matter pertaining to political interests, public relations and public policy for publication through newspapers, periodicals, manuscripts, books and pamphlets through the medium of a publishing house known as and by the name of Flanders Hall, Inc., a New Jersey corporation, having its principal place of business at Scotch Plains, New Jersey, which corporation and the officers and operations of which the defendant, George Sylvester Viereck, financed, controlled and directed and to which he, the said George Sylvester Viereck, furnished manuscripts and other written and printed material for the purpose, among others, of having the said manuscripts and other written and printed material published, printed, sold and distributed by the said Flanders Hall, Inc., and by others, within the United States of America; and

Published, printed, sold, distributed and disseminated and caused to be printed, published, sold, distributed and disseminated by mail and otherwise under the imprint of the said Flanders Hall,

Inc., publishers, books, pamphlets, manuscripts, and other material pertaining to political interests, public relations and public policy, including in whole and in part translations and adaptations from books, pamphlets, manuscripts, and other matter issued and distributed by and through the Deutsche Informationsstelle, Berlin, Germany, and also books, pamphlets, manuscripts, and other matter written and printed in the United States, including among others the following:

Lord Lothian versus Lord Lothian; The Hapless Boers; Democracy on the Nile; Misadventure in Scandinavia; War Against Women and Children; The Whipping Block; Turkey Reborn; Inhumanity Unlimited; What About Africa?; Doublecross in Palestine; for the purpose, among others, of influencing, persuading, bending and molding American public opinion in matters pertaining to political interests, public relations and public policy; and

Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writer.

Count 5 charges that in his supplemental registration statement filed April 25, 1941, the defendant unlawfully, willfully, feloniously and know-

ingly omitted to state and set forth in his said supplemental registration statement a material fact, to-wit: That the defendant during the period from March 17, 1941, to April 25, 1941, the defendant Viereck:

Wrote, revised, edited and prepared manuscripts, documents and other written matter, which said manuscripts, documents, and other written matter pertained to political interests, public relations and public policy, and which said manuscripts, documents and other printed matter and portions thereof were thereafter inserted and printed and published in whole and in part in the Congressional Record; and which said manuscripts, documents and other printed matter were thereafter published in whole and in part by Flanders Hall, Inc.

Consulted, conferred and advised with divers persons in connection with speeches, public addresses, radio broadcasts, manuscripts, pamphlets, books, periodicals and other matter pertaining to political interests, public relations and public policy; and

Advised, consulted and informed, directly and indirectly, one Prescott Dennett and divers other persons in matters pertaining to political interests, public relations and public policy by aiding, abetting and assisting the said Prescott Dennett and divers other persons in the operation and work of certain committees known as and by the name and style of "Make Europe Pay War Debts Committee," "Islands for War Debts Committee," and "War Debts Defense Committee," and by contributing large sums of money for the maintenance of

and to defray the expenses of the said committees; it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee," "Islands for War Debts Committee," "War Debts Defense Committee" and Prescott Dennett and divers other persons to the Grand Jurors unknown to disseminate, distribute by mail under Congressional franking privilege and otherwise certain speeches and public addresses delivered on the floor of Congress and elsewhere by present and former members of both houses of the Congress of the United States and to place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matters pertaining to political interests, public relation and public policy; and

Engaged, directly and indirectly, within the United States, in distributing, disseminating and placing of oral and written information and matter for publication in the form of manuscripts, books and pamphlets through the medium of a publishing house known as and by the name of Flanders Hall, Inc., a New Jersey corporation, having its principal place of business at Scotch Plains, New Jersey, which corporation and the officers and operations of which the defendant, George Sylvester Viereck, financed, controlled and directed and to which he, the said George Sylvester Viereck, furnished certain manuscripts and other material for the purpose among others of having the said manuscripts and other material published,

printed, sold and distributed by the said Flanders Hall, Inc., and by others within the United States of America; and

Published, printed, sold, distributed and disseminated and caused to be printed, published, sold, distributed and disseminated by mail and otherwise, books, pamphlets, manuscripts and other material, including in whole and in part translations and adaptations from books, pamphlets, manuscripts and other matter issued and distributed by and through the Deutsche Informationsstelle, Berlin, Germany, and also books, pamphlets, manuscripts and other matter written and printed in the United States, including among others the following:

Lord Lothian versus Lord Lothian; The Hapless Boers; Democracy on the Nile; Misadventure in Scandinavia; War Against Women and Children; The Whipping Block; Turkey Reborn; Inhumanity Unlimited; What About Africa; Doublecross in Palestine, for the purpose, among others, of influencing, persuading, bending and molding American public opinion in matters pertaining to political interests, public relations and public policy; and

Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from

the public of the United States the true name and identity of the writer.

I have given to you the substance of the charges made in the counts of the indictment which you are concerned with. To these charges, as relating to each count of the indictment which is for your consideration, you are told that the defendant has entered a plea of not guilty.

I think I will have to have a little rest before I go on with this. I will excuse the jury now and ask you to keep in mind the admonition and be back in one hour.

(At 12:45 o'clock P. M. a recess was taken to 1:45 o'clock P. M.)

Afternoon Session

(The proceedings were resumed, pursuant to the noon recess, at 1:45 o'clock P. M.)

Mr. COHALAN. Your Honor, would you allow me just for a brief moment before you resume, to come up to the bench and approach your Honor?

The COURT. Yes.

(Side-bar conference was had as follows:)

Mr. COHALAN. There are two oversights on my part that I would like to call to your attention. I neglected this morning to ask you, or yesterday afternoon to ask you to let me have an exception noted on the record to a certain portion of Mr. Hickey's summation. It was an oversight that in lieu of the circumstances I would like your Honor to let me have that, if you would.

I refer specifically to page 1496 of the record where the following statement took place:

> Now, you further heard the Webbers' testimony concerning this defendant's own ad-

> mission that he had organized these patriotic committees here in Washington, that they were his idea.
>
> Now, I submit that that statement remains absolutely uncontradicted. You can draw whatever inference you desire from that character of testimony.

I have studied this, your Honor. Frankly, I do not know whether or not—how close this comes to calling the attention of the jury inferentially, at least, to the fact that the defendant did not take the stand in his own defense.

As I say, I do not know how close it does come, but I would like your Honor to give me the privilege of an exception as related to that statement, on the ground it does tend to infer.

The COURT. Let me look at it just a moment. What do you say about it?

Mr. HICKEY. Well, I merely want to say this, your Honor. I did not intend by that statement to call attention to the defendant's not taking the stand. I merely was calling attention to the fact that even on cross examination of those witnesses or in cross examination of any witnesses or by any testimony which was adduced in this trial, that statement still remained uncontradicted.

I do not think that it comes within the contemplation of the Leskowitz case against Cohen, the failure of the defendant to take the stand.

The COURT. The trouble is, if I give you an exception to that, the record is silent as to the explanation which Mr. Hickey would then have the privilege to make, and which he now has indicated.

Mr. COHALAN. Well, I think he would be entitled to make an explanation to your Honor.

The COURT. Yes.

Mr. COHALAN. I still would like the exception noted, if your Honor will accord it to us.

The COURT. Well, you have brought it to my attention. I think in view of the circumstances and the fact that Mr. Hickey would have no opportunity of elaborating, that I shall deny the exception. You may have an exception to the denial of your exception. That will give you as much record as you need.

Mr. COHALAN. Now, another thing, this morning, at the conclusion of Mr. Maloney's summation, I did not seize the opportunity of seeking an exception to certain things that he said that were outside the indictment, and tended to arouse the emotions of the jury in a manner that I considered improper, so far as the defendant is concerned.

Will your Honor allow me to note an exception to that fact on the record?

The COURT. Well, I think I must deny the exception upon the same ground, if it had been timely he might have wished to make some explanation of the remarks which you now complain of. You may have an exception to my denial of that exception.

Mr. MCGUIRE. Your Honor, there is no exception we might have made at that time which would have removed from the minds of the jury what he had said; no explanation would explain away what he said.

The COURT. No, not now.

Mr. MCGUIRE. Or, even then.

The COURT. But, if an exception had been timely made, whatever wrong inference might

be drawn, it may have been corrected by an explanation.

Mr. COHALAN. The only reason I am coming up here and asking you, or one of the most important reasons, is that I feel most strongly that this defendant should be accorded every protection that he is possibly entitled to under the circumstances. I am sure that your Honor agrees with me. I do not wish to think that because of my tardiness in taking exception that the defendant may have lost any advantage which would accrue to him if that exception had been promptly taken, and for that reason——

The COURT. Well, I do not see how it would give you more in the way of a record than the exception that you have to my denial.

Mr. COHALAN. Your denial to giving us an exception?

The COURT. Yes.

Mr. COHALAN. All right, thank you, sir.

(Counsel return to the counsel table.)

The COURT. Ladies and gentlemen of the jury, you are now told that at the outset in all criminal cases there is a presumption in law that the person who stands accused is not guilty of the offense with which he is charged; that presumption should remain in the minds of the jurors for the benefit of the defendant until it is overcome by proof which satisfies the jury beyond a reasonable doubt that he is guilty.

The burden of proof is upon the Government. This means that before you will be warranted in finding the defendant guilty the Government must prove, and you must find from the evidence beyond

a reasonable doubt, the truth of the allegations of the indictment as to all essential elements of the crime charged, and this proof, as I have indicated, must be to your satisfaction beyond a reasonable doubt.

A reasonable doubt, as the words themselves import, is a doubt in reason. It means such a doubt as will leave the jurors' mind after a full, fair, candid and impartial investigation of all the facts and circumstances shown in the evidence, so undecided that the juror is unable to say that he or she has an abiding conviction of the defendant's guilt; or, such a doubt as in the graver and more important transactions of life, would cause a reasonable and prudent person to hesitate and pause.

The words "reasonable doubt" must be given their usual and ordinary meaning. The doubt must not be trivial or whimsical or based upon grounds of conjecture. The doubt must not be sought after, for when it is such a doubt the law recognizes it arises fairly and naturally in the mind of the juror upon the full, fair consideration of all the facts and circumstances in evidence in the case. This doubt must arise out of the evidence or from a lack of existing evidence, and it must be a doubt which appears to you to be reasonable under the facts and circumstances of the case.

The Government does not claim that the defendant failed to file a registration statement with the Secretary of State as required by the Act or that he failed to file supplemental registration statements at the end of the various six months' periods. He did that. It is the theory and claim of the Government that the defendant was obliged under

the Act at the end of each six months' period to file a supplemental registration statement; that as a part thereof he was required by the law and by the regulations promulgated by the Secretary of State, to make a comprehensive statement of the nature of his business, and that he willfully omitted to do so.

The Government seeks to hold the defendant criminally liable for willful omission in his supplemental statements of material fact or facts necessary to constitute a comprehensive statement of the nature of his business.

The essential elements of the offense charged in each count of the indictment are these:

First; that the defendant in filing a supplemental statement failed to make a comprehensive statement of the nature of his business, in that he omitted to state some material facts substantially as charged in the indictment.

Second, that such omission was willful. If the Government has established each of these propositions to your satisfaction beyond a reasonable doubt, you will be warranted in finding the defendant guilty upon any count of the indictment to which such proof relates. If the Government has failed to so prove either of the propositions so stated as to any count of the indictment, you should find the defendant not guilty on such count.

You will be asked for a separate verdict on the second, third and fifth counts of the indictment. Perhaps I should give you this definition.

The omission of the defendant to state any material fact necessary to a comprehensive statement of the nature of his business was not criminal, un-

less such omission was willful. You are therefore told that willful, as used in the Act, implies knowledge that the defendant, as agent of a foreign principal, was required by the Act and the regulations of the Secretary of State to state in his supplemental registration statement any and all material facts necessary to make public as a matter of information, the nature of his business; and, having such knowledge the defendant had the deliberate intention of avoiding the requirements of the statute.

A material fact, within the meaning of the law, is a fact, the disclosure of which, is reasonably necessary to apprize the American public of the nature of the business of the registrant; a comprehensive statement of the nature of the business of the registrant within the meaning of the law is a statement of such material fact or collection of material facts as may be reasonably necessary to inform the American people of the nature of the business of the registrant; the business of the registrant within the meaning of the law comprises any and all gainful occupations or pursuits customarily followed by the registrant to gain a livelihood or to produce an income.

The Act does not in any way impair the right of freedom of speech or of free practice or other constitutional right. The American public may not be deprived of political information even though it be propaganda. There is no law to prohibit its dissemination among the people, but, as a matter of public policy, our Government and the people of the United States are entitled to know the sources of foreign political propaganda and

the person, persons or agencies carrying on the work and bearing the expense incident to its dissemination in the United States.

I now have before me certain prayers which have been asked by the Government, some of them have been granted by the Court. When I have completed the reading of those allowed for the Government I will take up certain prayers asked by the defendant and granted by the Court.

With respect to these prayers either for the Government or for the defense, you are told that no one prayer states all the law of the case. It states the law insofar as it goes, but not beyond that.

In order to have a comprehensive understanding on the law of the case it would be necessary for you to understand the propositions of law contained in the Government's prayers and in the prayers for the defendant, in connection with everything that is said by the Court in the Court's general charge to the jury.

Government's prayer No. 1 reads as follows:

> The indictment in this case is in three counts. Each of these counts constitutes a separate and distinct charge, the same as if each were contained in a separate and distinct indictment, and in your deliberation you are to consider each count separately.
>
> You may, after considering the evidence in this case, find the defendant guilty or not guilty on all three counts, or you may find him guilty on any one count and not guilty on other counts.

Government's revised prayer No. 2:

> The defendant is charged with having willfully failed in his supplemental registra-

tion statements filed with the Secretary of State on April 23, 1940, October 25, 1940, and April 25, 1941, to set forth certain material information which he was required by law to disclose.

One of the requirements established by the Secretary of State and set forth as Query No. 11 is that each registrant give a comprehensive statement of the nature of his business.

In answer to this requirement, defendant sets down the words "author and journalist," on each of the supplemental registration statements in question.

The indictment charges that the words "author and journalist" do not constitute a comprehensive statement of the nature of the business of this defendant, and that by so answering Query No. 11 it is charged in the indictment the defendant willfully omitted to state material facts which the law required him to state.

The indictment sets forth certain activities which defendant allegedly engaged in.

Those are the activities which I enumerated when presenting the substance of the indictment to you, and it will not be necessary for me here to repeat them.

If you find (1) that the defendant did the things charged by the Government in the indictment as a part of his business and (2) that such business constituted material information required by law to be disclosed, and (3) that the defendant willfully failed to disclose this material information in the supplemental registration statements, then you may find the defendant guilty as charged in each count of the indictment.

Government's prayer 2–A:

> It is for the jury to determine in the light of all the circumstances under which this law was passed and particularly in view of the fact that its avowed purpose is to compel full disclosure of activities of foreign propagandists whether when defendant stated "author and journalist" in response to query No. 11 he willfully intended to conceal from the Secretary of State and the American people his activities in connection with Flanders Hall, the so-called War Debt Committees, the mailing under Congressional frank of large quantities of reprints of so-called non-interventionist material, and the writing of all or part of certain speeches for members of the Congress, and to that end willfully omitted to include these activities in his response to Query No. 11.

Government's Prayer No. 3:

> In order to find the defendant guilty it is not necessary that you find that he willfully failed to disclose every one of the facts alleged in each count of the indictment. It is sufficient if he willfully failed to disclose any one of the facts set forth in each count of the indictment, if you also determine such fact to have been material information which the defendant should have disclosed in answer to the question "Comprehensive statement of nature of the business of registrant."

Government's Prayer No. 5:

> The Court further instructs you that the word "willfully" means "intentionally" as distinguished from "carelessly," "negligently" or "inadvertently." The word "willfully" means no more than that the

person charged with the duty knows what he is doing. It does not mean that in addition he must suppose that he is breaking the law.

Mistake of law is no defense.

If you find that the defendant did the things alleged in the indictment, and you also find those things to be material facts required to be disclosed in answer to the question "comprehensive statement of the nature of the business of registrant," and that the defendant willfully failed to disclose them, then you may find the defendant guilty even though you find that the defendant had some different view of the law and thought that the law did not apply to him.

Government's Prayer No. 6:

The burden of proving guilt rests upon the Government and must be sustained by evidence which sustains his guilt beyond a reasonable doubt. This burden rests upon the Government throughout the trial.

The term "reasonable doubt" means a doubt for which a good reason can be given in the light of all the evidence. It means a doubt which is substantial and not merely shadowy. It does not mean a doubt which is merely capricious or speculative. Neither does it mean a doubt borne of reluctance on the part of a juror to perform an unpleasant duty or a doubt arising out of sympathy for a defendant or out of anything other than a candid consideration of all the evidence presented.

Government's No. 7:

It is the duty of the Court to state the principles of law which are applicable, and it is also the Court's duty to decide all ques-

tions with respect to the admission and rejection of evidence.

The jury are the sole judges of the issues of fact and of the real truth of whatever is involved in those issues. It is also the Court's duty to assist the jury in so far as this can be done by referring to subsidiary questions of fact and to the evidence or state of evidence bearing upon them. But the jury should regard all expressions of the Court in this connection as made for the purpose of aiding the jury and not of directing it. If the Court's expressions are not in accord with the jury's understanding of the evidence or its reasonable import they should be rejected and effect is to be given by the jury to its own understanding and conclusion, for in the last analysis the jury are the sole and exclusive judges of all questions of fact.

Government's Prayer 8:

The jury is further advised as a matter of law by the Court that if you find that the defendant engaged in the activities set forth in the indictment, it is not necessary that you find that he engaged in such activities on behalf of his foreign principal or principals. It it sufficient if you find he engaged in the activities, whether on behalf of his foreign principal or principals or on his own behalf.

Government's Prayer No. 9:

It is not necessary for the Government to prove the guilt of the defendant beyond a possible doubt. If that were the rule few men, however guilty they might be, would be convicted. In this world of ours it is practically impossible for a person to be absolutely and completely convinced of any

fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough that the defendant's guilt be established beyond a reasonable doubt—not all possible doubt.

Government's Prayer No. 10:

The jury is composed of twelve persons. While undoubtedly their verdict should represent the opinion of each individual juror, by no means does this mean that opinions may not be changed by conference in the jury room. The very objective of the jury system is to secure unanimity by a comparison of views and by arguments among the jurors themselves. Each juror should listen with a disposition to be convinced to the opinions and arguments of the others. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion only of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors who are equally honest and intelligent.

Now, I take up the——

Mr. HICKEY. Your Honor, may we approach the bench for a moment?

The COURT. Yes.

(Side-bar conferenee was had as follows:)

Mr. HICKEY. Your Honor, I am not sure, but I do not recall your stating anything in your general charge to the jury regarding how they should determine materiality.

I think you intended to do that.

Mr. COHALAN. Yes, you did say something.

The COURT. I told them in a series of little statements what a material fact is; what a comprehensive statement is and what "business" means.

Mr. HICKEY. I see.

The COURT. I gave those three things.

Mr. HICKEY. I am sorry.

Mr. COHALAN. My understanding of your practice down here is that you read our charge first, you charge the jury in toto and then you ask us for anything we have to say?

The COURT. That is right.

(Counsel return to the counsel table.)

The COURT. A part of the defendant's prayer No. 1 has been refused by the Court. One part of it, however, has been granted. That I shall now read to the jury:

> The supplemental registration forms permit the use of the word "same" to be written into the appropriate spaces where the answers in the supplemental registration forms would be exactly the same as answers made to similar questions in a previous statement filed by the registrant with the Secretary of State.

Defendant's Prayer No. 4 reads as follows:

> During the period covered by this indictment, the dissemination of propaganda in this country by any foreign Government or by any foreign group or agency of any kind was not a crime.

Defendant's Prayer No. 5:

> The defendant here was registered as the agent of certain principals domiciled in Germany. During the periods covered by this indictment the relations between this country and Germany were tense. Although

we were then not in a state of war with Germany, the relationship was shrouded with an atmosphere of hostility and unfriendliness. These circumstances are to play no part in your consideration of the guilt or innocence of this defendant.

The mere fact of registration under the Act affords no ground for assuming that any person registered as an agent for a foreign principal, including this defendant, was engaged in an unpatriotic activity.

Defendant's Prayer No. 6:

The only object and purpose of an indictment in a criminal case is to inform the defendant of the nature and cause of the accusation against him. It does not amount to evidence against the defendant in the slightest degree whatever and the only purpose for which it can be considered by the jury is to determine the charge with which the defendant is accused. It is a mere accusation and it is incumbent on the Government to sustain the accusation by proof beyond a reasonable doubt.

Defendant's Prayer No. 7:

The defendant is presumed to be innocent of the charge made against him and that presumption exists in his favor and continues with him for his proper protection until the evidence adduced displaces such presumption. This is true not only as respects the accusation as a whole but as respects every material element of it. The presumption of innocence is not displaced merely because the evidence preponderates against the defendant. It must be more than that. The evidence must be of such a character as to establish guilt beyond a reasonable doubt.

Defendant's Prayer No. 8:

The Court instructs the jury that in this case the law raises no presumption against the defendant, but that the presumption of law is in favor of the innocence of the defendant, and in order to convict him of the crime alleged in the indictment, every material fact to constitute such crime must be proved beyond a reasonable doubt; and if the jury entertain any reasonable doubt upon any single fact or element necessary to constitute the crime, it is their duty to give the defendant the benefit of its doubt and render a verdict of not guilty.

Defendant's Prayer No. 9:

The jury are instructed in weighing the evidence in the case, that if the acts and conduct of the defendant are just as consistent with innocence as with guilt, then the defendant is entitled to the benefit of the presumption of innocence.

Defendant's Prayer No. 10:

The jury are instructed that if, after considering all the evidence in the case they feel that all the evidence is just as consistent with the innocence of the defendant as with his guilt, then their verdict should be not guilty as to the defendant.

In other words, if it is clear that reasonable minds could not differ on the fact that the testimony is consistent with innocence, if the testimony could be so construed among men of reasonable minds, the jury must find the defendant not guilty of the crime charged.

Defendant's Prayer No. 11:

The jury are instructed that the burden is not upon the defendant to prove his innocence, but upon the United States to prove his guilt beyond a reasonable doubt. And unless you find the defendant's guilt to be established beyond a reasonable doubt, you should find him not guilty and if you can reconcile all the testimony in the case with any reasonable hypothesis of the defendant's innocence, it is your duty to do so and in such event you should find the defendant not guilty.

Defendant's Prayer No. 12:

The burden of proving the defendant guilty of the crime charged in the indictment rests solely upon the Government and this burden must be sustained by evidence which establishes guilt beyond a reasonable doubt. This burden rests upon the Government throughout the entire trial.

Defendant's Prayer No. 13:

Reasonable doubt does not mean a mere doubt, but it means just what the words themselves indicate, that there is a doubt founded in reason and arising from the evidence; nothing extraneous, but from the evidence. Reasonable doubt is a real doubt arising from the evidence and based on reason; such a doubt as will leave the juror's mind, after a candid and impartial consideration of all the evidence so undecided that he is unable to say that he has an abiding conviction beyond a reasonable doubt of the defendant's guilt; or such a doubt as in the graver and more important transactions of life, would cause a reasonable and prudent man to hesitate and pause.

Defendant's Prayer No. 15:

The jury must decide the case upon the evidence that has been adduced before them, and not upon any personal knowledge of the facts which they possess, or which has been brought to their attention otherwise than by the witnesses and evidence during the course of the trial itself.

While it is the duty of each juror to discuss and consider the opinion of his fellow jurors, he must decide the case upon his own opinion of the evidence and upon his own judgment.

Defendant's Prayer No. 16:

If the evidence does not satisfy you beyond a reasonable doubt that the defendant is guilty; if the evidence does not overcome beyond a reasonable doubt, the presumption of innocence with which the defendant is clothed; if the evidence does not overcome beyond a reasonable doubt all of the reasonable hypotheses or explanations brought forward on his behalf, then you should return a verdict of not guilty, regardless of any consequences.

Defendant's Prayer No. 17:

Some of the evidence in this case is circumstantial. Circumstantial evidence is that evidence which tends to prove a disputed fact, by proof of other facts which have a legitimate tendency to lead the mind to the conclusion that the fact exists which is sought to be established.

The jury may find the defendant guilty upon circumstantial evidence, provided such evidence measures up to the standard required by law; that the rule as to circumstantial evidence stated briefly, is that cir-

cumstances relied on must point so unerringly to the guilt of the accused as to exclude every other reasonable hypothesis; that the circumstances relied upon must be proved to the satisfaction of the jury beyond a reasonable doubt; that the circumstances must be consistent with each other, and inconsistent with any other reasonable hypothesis except the guilt of the accused; and that they must point, as stated, so unerringly to the accused as to exclude every other reasonable hypothesis, except the hypothesis of guilt.

Defendant's Prayer No. 18:

Under the law it is entirely a matter of choice whether or not the defendant himself becomes a witness at his trial. He is not compelled to do so. His failure to testify does not create any presumption against him and such failure may not be construed unfavorably to him.

In this jurisdiction we divide the responsibility in cases of this kind between the Court and the jury. It is for the Court to direct the orderly proceedings of the trial; to rule upon questions of law as they arise in the conduct of the trial and upon the admissibility of evidence, and to declare the law of the case.

It is the duty of the jury to take the law as stated by the Court and apply that law to the facts and circumstances of the case as shown in the evidence.

It is the exclusive province of the jury to determine matters of fact and the questions of guilt or innocence.

In coming to your conclusion you should do so with an understanding of the law and your deliber-

ations should be utterly to the end that your verdict will be a just verdict.

You are the sole judges of the credibility of the witnesses and of the weight you will accord to the testimony of each of them. You should accord to individual witnesses and to the testimony given by them, that degree of credit and effect which in your honest judgment you think they ought to have, taking into consideration in so far as you are able to do so from the manner and appearance of the witness on the stand whether the testimony of that witness be frankly and honestly given; the apparent intelligence or lack of intelligence of the witness; his ability and opportunity to observe the facts that transpired within his presence, and his ability to remember what at a prior time he has observed, and his ability to express accurately and communicate to you through the medium of words that which passed within his observation.

Also, what if any interest the witness has in the outcome of the case and whether or not on that account he has colored in any way the facts relating to his testimony; and again whether or not there is manifested by any witness any bias, prejudice or feeling for or against the defendant, and if so, whether or not that has colored the testimony of such witness one way or the other.

Furthermore, you are told that if you find that any witness has knowingly testified falsely with respect to any matter material to the issues of this case and concerning which such witness might not reasonably be mistaken, you may, if you wish, reject all or any part of the testimony of such witness.

The rule of law, however, does not prevent you from giving weight to such part of the testimony of such witness as you may find to be trustworthy and reliable. Thus you may find parts of the testimony of the witness can be supported or corroborated by other evidence in the case which you may believe to be true, and thus, even though you might find other parts of such testimony to be untrue.

Gentlemen, if you have anything for the record you may come to the bench.

(Side-bar conference was had as follows:)

Mr. MALONEY. Judge, there is just one thing. I think it is a rather minor point but you instructed the jury that they shall consider only the second, third and fifth counts. I just want to point out to your Honor that the second, third and fifth counts refer to the first count and incorporate by reference some of the material set forth in the first count.

I do not think it makes any difference, really. For instance, in the first paragraph of the second count, I believe a paragraph or so of count 1.

The COURT. Let me say that to the jury.

I am reminded to say to the jury that while your verdict should be taken only upon the second, third and fifth counts of the indictment, you will see when you examine the indictment that in each of those counts there is incorporated by reference certain allegations that are contained in the first and fourth counts.

Mr. MALONEY. Just the first count.

The COURT. Just the first count. Where that happens you will understand that that becomes, that matter, the reference becomes a part of the count with which you are concerned.

Mr. COHALAN. Your Honor, do you think that in accordance with that last suggestion that you made to the jury that it might also be a wise thing to say to them that in regard to that indictment going into the jury room that they may have reference in the counts which are not before this jury, only to such portions as are incorporated by reference in the counts that are before them.

Mr. MALONEY. That is right.

The COURT. Yes.

I am now asked to say that when you are invited to look back to the first count for matters which are incorporated by reference in counts 2, 3 and 5, you are not to give weight to any other matter in count 1, other than that which is so incorporated.

Mr. MCGUIRE. Your Honor, I should like to have noted for the record that defendant notes an exception to that part of the Court's charge which concerns legislative history of the Act of June 8, 1938, and to the statement of such legislative history and report of the committee or an expression of the intent of the said Act of June 8, 1938, as to the purpose of the Act to require a full disclosure to the American people of the activities of the agents of foreign principals.

Our objection to that part of your Honor's charge being based upon the fact that in a criminal case the intent of the Congress must be found within the four corners of the statute itself.

The COURT. Well, that may go to all the matter which I stated on that point.

Mr. MCGUIRE. Yes. The second objection; the defendant also objects to that part of the Court's

charge which referred to question 11 of the supplemental registration form as if it was the only one which required a statement concerning the business of the agent of the foreign principal, and wherein the Court failed to charge the jury that there were at least several other matters in the remaining 18 questions which required a statement of the details of the agent's identification, salary, principal's contract and other details of his business.

In other words, the objection to that is that the jury is not invited to consider the registration statement as a whole and all the evidence, all the statements which he has made in it, but we think it is error to leave in the minds of the jury the thought that they must look to question 11 for this information.

Of course I do not think it is your Honor's intention that that be done, but I believe the charge as made would leave that impression upon the jury.

Therefore, we ask for an exception to that part of the charge.

The COURT. Yes, you may have it.

Mr. MCGUIRE. Also, we except to that part of the general charge which states and leaves the impression upon the jury that the defendant must, in addition—this is the effect of the charge—must, in addition to answering question 11 of the supplemental form, must state all of his activities, whether he is engaged in performing those activities as a private individual or as an agent for a foreign principal.

The COURT. Yes.

Mr. COHALAN. And in closing, your Honor, may I just renew my exception to your granting of Government's prayers Nos. 2, 2–A and 8, if I may call them in that way.

The COURT. That is, No. 2 as rewritten?

Mr. COHALAN. 2 and 2–A.

Mr. HICKEY. 2–A is revised.

Mr. COHALAN. 2, 2–A and 8. And, to your refusal to charge defendant's prayers Nos. 2, 3, 14 and 19.

The COURT. Yes, you may have that.

(Counsel return to the counsel table.)

The COURT. The jury may take the case. When you return you will be asked for a separate verdict on each of the three counts which are for your determination.

Now, I appreciate very much the cooperation of the alternate jurors. They have given thoughtful attention to this case but under the statute at this point of the trial it is necessary to dispense with your presence. So, the alternate jurors may step out.

(The two alternate jurors were thereupon excused.)

The COURT. The jury may now retire and deliberate on their verdict.

(Thereupon, at 3:00 o'clock P. M., the jury retired to consider of their verdict.)

The CLERK. This court will recess until the return of the jury.

(Recess taken.)

U. S. GOVERNMENT PRINTING OFFICE: 1943

SUPREME COURT OF THE UNITED STATES.

No. 458.—October Term, 1942.

George Sylvester Viereck, Petitioner, vs. The United States of America.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 1, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioner was convicted on three counts of an indictment, each charging him with the willful omission to state a material fact required to be stated in a supplemental registration statement filed by him with the Secretary of State, in violation of the penal provisions of the Act of June 8, 1938, 52 Stat. 631, as amended by the Act of August 7, 1939, 53 Stat. 1244, requiring the registration of certain agents of foreign principals. The question decisive of petitioner's challenge to the validity of his conviction is whether the statute or any authorized regulation of the Secretary required the statement which petitioner omitted to make.

Section 2 of the Act of 1938, as amended, provides that every person acting as "agent of a foreign principal", either as public-relations counsel, publicity agent or representative, with exceptions not now relevant, must file with the Secretary of State a registration statement, on a form prescribed by the Secretary, containing certain specified items of information. These include a copy of the registrant's contract with his principal, or a statement of its terms and conditions if oral, the compensation to be paid under the contract, and the names of all who have contributed or promised to contribute to the compensation. Beyond the terms and conditions of the registrant's contracts with foreign principals, the statute made no requirement that the original registration statement contain any information as to the registrant's services or activities either in performance of his contract of employment or otherwise.

By § 3 every registrant is required to file at the end of each six months' period, following his original registration, a

supplemental statement "on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period", and "(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period". And by §6, "The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act". Section 5 imposes penal sanctions upon "any person who willfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or willfully omits to state any material fact required to be stated therein".

In purported conformity to the statute, the Secretary, on September 15, 1939, promulgated regulations and prescribed a form of "Supplemental Registration Statement". Chapter IV, regulation 12, of the regulations provided: "Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration". The prescribed form of Supplemental Registration Statement directed the registrant to make a statement giving certain items of information, No. 11 of which was "Comprehensive statement of nature of business of registrant".

The three counts of the indictment on which petitioner was convicted charged that in three successive supplemental registration statements filed by him on April 23, 1940, October 25, 1940, and April 25, 1941, as the agent of German principals, he had knowingly and willfully failed to disclose, in response to item 11 which called for a "Comprehensive statement of nature of business of registrant", numerous activities in which he had engaged during the period covered by the supplemental registration statement. On the trial it appeared that petitioner, on September 26, 1939, had registered as agent and United States correspondent for the *Münchner Neueste Nachrichten*, a Munich newspaper, and had later lodged with the State Department a copy of his contract, dated September 27, 1939, as agent and editorial writer for the German Library of Information, an agency of the German government, to do editorial work in connection with "Facts in Review", a pub-

lication of the Library. On March 17, 1941, petitioner registered his contract, with a person associated with the Munich newspaper, to act as agent for the publication in the United States of a book "The One Hundred Families Who Rule Great Britain".

There was also evidence from which the jury could have found that during the eighteen months' period covered by petitioner's three supplemental registration statements, and from August 3, 1940, he had controlled and financed Flanders Hall, a corporation which published numerous books and pamphlets from manuscripts furnished by petitioner; that it had also published other books furnished by petitioner which purported to be English translations of French or Dutch publications, or to have been compiled from English sources, but which were in fact translations of German books published by the *Deutsche Informationsstelle* of Berlin. All were highly critical of British foreign and colonial policy. During this period petitioner actively participated in the formation of the "Make Europe Pay War Debts Committee", and the "Islands for War Debts Committee", and made use of these organizations as a means of distributing propaganda through the press and radio and under Congressional frank. He also consulted with and was active in writing speeches for various members of Congress, and in securing distribution of the speeches under Congressional frank.

In making the statement required by item 11 in each of his three supplemental registration statements, petitioner responded to the request for a comprehensive statement of the nature of his business by the single phrase "Author and journalist". He made no further disclosure of his various activities during the period covered by the supplemental registration statements.

When submitting the case to the jury, the trial court, at the Government's request, charged that "if you find that the defendant engaged in the activities set forth in the indictment, it is not necessary that you find that he engaged in such activities on behalf of his foreign principal or principals. It is sufficient if you find that he engaged in the activities, whether on behalf of his foreign principal or principals or on his own behalf". On appropriate objection and exception to this instruction, petitioner contended that under the statute he was not required to disclose his activities on his own behalf but only those for foreign principals. The jury returned a verdict of guilty, the judgment

of conviction was affirmed by the Court of Appeals for the District of Columbia, 130 F. 2d 945, and we granted certiorari. 317 U. S. —.

As the charge left the jury free to return a verdict of guilty if it found that petitioner had willfully failed to disclose activities which were wholly on his own behalf, the conviction can be sustained only if the failure to disclose such activities was a criminal offense. In its brief and on the argument here the Government accordingly conceded that — even though the evidence might warrant a jury's finding that all petitioner's activities were in fact in behalf of his foreign principals—the conviction cannot stand if the charge was erroneous. See *Williams* v. *North Carolina*, decided December 21, 1942, p. 3; *Pierce* v. *United States*, 314 U. S. 306, 310. We are thus brought to the question whether the statute, supplemented by the regulations of the Secretary, required such information to be given and imposed penal sanctions for petitioner's willful failure to give it.

The Act of 1938 requiring registration of agents for foreign principals was a new type of legislation adopted in the critical period before the outbreak of the war. The general purpose of the legislation was to identify agents of foreign principals who might engage in subversive acts or in spreading foreign propaganda, and to require them to make public record of the nature of their employment. But the means adopted to accomplish that end are defined by the statute itself, which, as will presently appear more in detail, followed the recommendations of a House Committee which had investigated foreign propaganda. These means included the requirement of registration of agents for foreign principals—with which it appears that petitioner complied—and the requirement that the registrant give certain information concerning his activities as such agent.

One may be subjected to punishment for crime in the federal courts only for the commission or omission of an act defined by statute, or by regulation having legislative authority, and then only if punishment is authorized by Congress. *United States* v. *George*, 228 U. S. 14, 20-22; *Williamson* v. *United States*, 207 U. S. 425, 453-62; *United States* v. *Standard Brewery*, 251 U. S. 210, 219-20; *United States* v. *Eaton*, 144 U. S. 677; *United States* v. *Grimaud*, 220 U. S. 506; *United States* v. *Smull*, 236 U. S. 405; *In re Kollock*, 165 U. S. 526. Penal sanctions attach here for will-

ful failure to file a statement when required, or if the registrant "willfully omits to state any material fact required to be stated". Unless the statute, fairly read, demands the disclosure of the information which petitioner failed to give, he cannot be subjected to the statutory penalties.

It is to be noted that although the statute required registration of contracts already entered into at the time of its adoption, it did not include, in its enumeration of information to be given in the original registration statement, any disclosure of a registrant's activities either under his agency contract or otherwise. And the only mention in the statute of a statement of such activities is in § 3(c), which directed that supplemental registration statements contain "such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal". The requirement of this section is subject to two litimations. One is that the statement is to be of such details of the registrant's activities "as the Secretary shall fix"; the other is that the details are to be of activities of the registrant "as agent of a foreign principal".

Neither limitation can be disregarded in determining what statement the statute, and any regulation which it authorizes the Secretary to promulgate, called on petitioner to make. The Secretary's regulation 12 of chapter IV, already quoted, on which the Government relies, plainly does not call for any statement of a registrant's activities. It only declares that agents who engage in activities "whether or not on behalf of their foreign principal" are subject to registration. It requires no statement of their activities and adds nothing to the command of §§ 2 and 3 that all agents of foreign principals shall register, a requirement with which petitioner complied. Whatever the undisclosed purpose of this regulation, a fair reading of it would not indicate to a registrant that it required any statement of his activities in any capacity.

But treating item 11 of the Supplemental Registration Statement ("Comprehensive statement of nature of business of registrant"), prescribed by the Secretary, as a regulation fixing the details of the registrant's activities which he is required to state, it must either be taken as limited to a statement of his activities as agent, to which § 3(c) alone refers, or to exceed the authority conferred upon the Secretary by that section. In neither case does the statute command, or authorize the Secretary to command, registrants to

make any statement of their activities other than those in which they have engaged "as agent".

We cannot read that phrase as though it had been written "while an agent" or "who is an agent". The unambiguous words of a statute which imposes criminal penalties are not to be altered by judicial construction so as to punish one not otherwise within its reach, however deserving of punishment his conduct may seem. Nor is such an alteration by construction aided by reference to § 6, which directs the Secretary to prescribe rules and regulations "to carry out this Act". For, as we have seen, the only provision of the Act relating to statements of the registrant's activities is § 3(e), which defines its own and the Secretary's limitations. Section 6 does not give to the Secretary any authority not to be found in the Act, and especially not an authority which overrides the specific limitations of § 3(e).

While Congress undoubtedly had a general purpose to regulate agents of foreign principals in the public interest by directing them to register and furnish such information as the Act prescribed, we cannot add to its provisions other requirements merely because we think they might more successfully have effectuated that purpose. And we find nothing in the legislative history of the Act to indicate that anyone concerned in its adoption had any thought of requiring, or authorizing the Secretary to require, more than a statement of registrants' activities in behalf of their foreign principals.

In 1935 the McCormack committee, reporting on its Investigation of Nazi and Other Propaganda, recommended: "That the Congress should enact a statute requiring all publicity, propaganda, or public-relations agents or other agents or agencies, who represent in this country any foreign government or a foreign political party or foreign industrial or commercial organization, to register with the Secretary of State of the United States, and to state name and location of such foreign employer, the character of the service to be rendered, and the amount of compensation paid or to be paid therefor", H. R. Rep. No. 153, 74th Cong., 1st Sess., p. 23. The House and Senate committee reports, urging enactment of the McCormack bill which became the 1938 Act, both declare that its purpose was to carry out these recommendations of the McCormack committee. H. R. Rep. No. 1381, 75th Cong., 1st Sess., p. 1; S. Rep. No. 1783, 75th Cong., 3d Sess., p. 2.

As may be seen from the text which we have quoted, these recommendations were limited to the proposal of specific measures for achieving the committee's general purpose, by requiring disclosure of the identity of the agent and of his foreign principal and the agent's relationship to the principal. They give no hint of an intention to require agents to disclose activities not in behalf of their foreign principals. And in supporting the amendatory legislation enacted in 1942, which, among other additions, required registrants to make "a comprehensive statement of the nature of registrant's business", [Act of April 29, 1942, § 2(a)(3)], Representative McCormack stated: "The present bill strengthens the McCormack Act. I was experimenting at that time, and, naturally, when you are experimenting you cannot go as far as you can after you have had experience, and in the light of the experience gained from the administration of the McCormack Act, these amendments are necessary to strengthen the Act for the best interests of our country." 88 Cong. Rec., Jan. 28, 1942, p. 830.

Even though the specific restriction of § 3(c) were due to defective draftsmanship or to inadvertence, which hardly seems to be the case, men are not subjected to criminal punishment because their conduct offends our patriotic emotions or thwarts a general purpose sought to be effected by specific commands which they have not disobeyed. Nor are they to be held guilty of offenses which the statutes have omitted, though by inadvertence, to define and condemn. For the courts are without authority to repress evil save as the law has proscribed it and then only according to law.

The Government argues that the statute would have been a "halfway measure" had it not required, or at least authorized the Secretary to require, the registrant to reveal the propaganda which he put out other than on behalf of his foreign principal. Congress itself has recognized that the legislation was in this sense a halfway measure when in 1942 the Act was amended so as to require both original and supplemental registration statements to contain a "comprehensive statement of the nature of registrant's business", together with other specifically required information as to the character of registrants' activities. Act of April 29, 1942, §§ 2(a)(3), 2(a)(4), 2(a)(8), 2(a)(10), 2(b).

The Senate Judiciary Committee in recommending the 1942 legislation said that "the present Act is also improved by explicit enlargement of the registration provisions so as to render them more

efficacious for disclosure and investigative purposes." S. Rep. No. 913, 77th Cong., 1st Sess., p. 9. The House Judiciary Committee declared "the existing law is also believed to have been bolstered by explicit enlargement of the registration provisions so as to render them more efficacious for disclosure and investigative purposes. . . . All of these additions have been prompted by experience in cases under the present act." H. Rep. No. 1547, 77th Cong., 1st Sess., pp. 3-4.[1]

While we find in the committee reports no mention of the explicit restriction of the application of § 3(c) of the old Act to the registrant's activities "as agent", the reports reveal a clear purpose to make the registration requirements of the new Act extend to all his activities.[2] We think that in this respect the new Act

[1] This statement, which omitted to point out that the activities referred to in Section 3(c) were the registrant's activities "as agent", was copied verbatim from a statement which had been submitted at a hearing on November 28, 1941, by the Chief of the Special Defense Unit of the Department of Justice, who had a large share in drafting the 1942 legislation. See Hearings before Subcommittee No. 4 of the House Committee on the Judiciary, 77th Cong., 1st Sess., on H. R. 6045, pp. 26, 12. There is some language in his statement, also copied in the House Report at p. 4, which may indicate that the Department of Justice thought that the existing law required disclosure of "information about the nature of the registrant's business", and that the provision in the 1942 law would be "declaratory". If such was its meaning, the statement ignored and did not point out to the committee the explicit limitation of Section 3(c) of the old Act to the registrant's activities "as agent". Moreover, the statement was submitted by the Department after the institution of the prosecution of this case (the indictment was filed October 8, 1941). Hence in some measure it may have represented the Department's view of the law, which we think inadmissible, reflected in its requested charge to the jury in this case.

A like indefiniteness as to the extent to which the new legislation might be regarded as declaratory is suggested by the letter of the Attorney General of November 24, 1941, recommending the new legislation to the chairmen of the Senate and House Judiciary Committees. The Attorney General, however, seems to have thought that the provisions of the new bill would be declaratory, not of the provisions of the old Act, but of the "requirements of the registration statement of foreign agents as now prescribed or may be prescribed by the Secretary". Indication that the Attorney General did not regard the Act, before the 1942 amendment, as embodying this requirement of the Secretary is to be found in the first paragraph of his letter: "Under existing law, every person who is an agent of a foreign principal is required to file a registration statement with the Secretary of State, setting forth certain information disclosing the nature of his relationship to such foreign principal". Hearings, *supra*, pp. 55-56; S. Rep. No. 913, 77th Cong., 1st Sess., pp. 10-11.

[2] The committee reports referred to are reports on H. R. 6269, which was passed by Congress, but vetoed by the President because our entrance into the war had made it necessary to alter the bill in certain respects, not material here. A new bill, S. 2399, containing such changes, became the Act of April 29, 1942. See S. Rep. No. 1227, 77th Cong., 2d Sess.; H. R. Rep. No. 2033, 77th Cong., 2d Sess.

extends beyond the old, and that the application, *ex post facto*, of the new, to impose on petitioner a duty which the words of the old plainly exclude, is not to be justified by denominating the amendment as clarifying or declaratory legislation.

As the case must be remanded to the district court for further proceedings, we direct attention to conduct of the prosecuting attorney which we think prejudiced petitioner's right to a fair trial, and which independently of the error for which we reverse might well have placed the judgment of conviction in jeopardy. In his closing remarks to the jury he indulged in an appeal wholly irrelevant to any facts or issues in the case, the purpose and effect of which could only have been to arouse passion and prejudice.[3] The trial judge overruled, as coming too late, petitioner's objection first made in the course of the court's charge to the jury.

At a time when passion and prejudice are heightened by emotions stirred by our participation in a great war, we do not doubt that these remarks addressed to the jury were highly prejudicial, and that they were offensive to the dignity and good order with which all proceedings in court should be conducted. We think that the trial judge should have stopped counsel's discourse without waiting for an objection. "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty

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[3] "In closing, let me remind you, ladies and gentlemen, that this is war. This is war, harsh, cruel, murderous war. There are those who, right at this very moment, are plotting your death and my death; plotting our death and the death of our families because we have committed no other crime than that we do not agree with their ideas of persecution and concentration camps.

"This is war. It is a fight to the death. The American people are relying upon you ladies and gentlemen for their protection against this sort of a crime, just as much as they are relying upon the protection of the men who man the guns in Bataan Peninsula, and everywhere else. They are relying upon you ladies and gentlemen for their protection. We are at war. You have a duty to perform here.

"As a representative of your Government I am calling upon every one of you to do your duty."

to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger* v. *United States*, 295 U. S. 78, 88. Compare *N. Y. Central R. R. Co.* v. *Johnson*, 279 U. S. 310, 316-18.

Reversed.

Mr. Justice JACKSON and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 458.—October Term, 1942.

George Sylvester Viereck, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 1, 1943.]

Mr. Justice Black, with whom Mr. Justice Douglas concurs, dissenting.

The petitioner, having registered with the Secretary of State as a foreign agent, was convicted of wilful refusal to inform the Secretary of certain business activities in which he systematically attempted to influence the political thought of this country on behalf of Germany. The trial judge charged the jury not to convict the petitioner unless he had actual knowledge that the Act and the regulations required him to supply this information to the Secretary, and that having such knowledge he had refused to answer the Secretary's question with the "deliberate intention of avoiding the requirement of the statute." The jury found, and it is not questioned here, that the petitioner was a paid German propagandist engaged in various business activities, in all of which he made use of the same kind of propaganda calculated to further the interests of Germany in the United States. The Court holds that the congressional enactment required petitioner to reveal to the Secretary only the particular propaganda activities in which he engaged pursuant to his agency. It holds that the petitioner could keep secret, without violating the law, those propaganda activities undertaken on his own behalf, which were of exactly the same type and were intended to accomplish exactly the same purpose as those for which he had been hired by his German principals.

To this construction of the Act I cannot agree. I think that § 3(c) of the Act, which authorizes the Secretary to require statements "of the activities of such person as agent of a foreign principal" must be read in the light of the general purpose of the Act and in close connection with § 6, which permits the Secretary to

prescribe the "rules, regulations, and forms" necessary to carry out the Act. By such a reading, the Secretary was authorized to ask the question the petitioner failed to answer.

The general intent of the Act was to prevent secrecy as to any kind of political propaganda activity by foreign agents. Both the House and Senate Committees reporting the Bill under consideration declared it to be their purpose to turn "the spotlight of pitiless publicity" upon the propaganda activities of those who were hired by foreign principals. Appreciating that "propaganda efforts of such a nature are usually conducted in secrecy", they wanted to make full information concerning it "available to the American public" and sought by "the passage of this bill" to "force propaganda agents representing foreign agencies to come out 'in the open' in their activities, or to subject themselves to the penalties provided in said bill."[1] They declared that the purpose of the Bill was to require all such hired agents "to register with the State Department and to supply information about their *political activities*, their employers, and the terms of their contracts."[2]

What emerged from extended congressional investigations, hearings and deliberations was this Act, intended to provide an appropriate method to obtain information essential for the proper evaluation of political propaganda emanating from hired agents of foreign countries. As the House and Senate Committees considering the Bill said, it "does not in any way impair the right of freedom of speech, or of a free press, or other constitutional rights." Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of

[1] Senate Report No. 1783, House Report No. 1381, 75th Cong., 3d Sess.

[2] The House Committee hearings, which are available in manuscript form only, show the same broad purpose. In explaining the Bill to the House Committee, its author pointed out that it was particularly aimed at firms, groups, or businesses, used "as a means for that particular country or political party to hide its identity" and that the Bill covered "all activities of all kinds, that is, all propaganda activities, no matter from what source it emanates." The Congressional Committee, whose Chairman was the author of this Bill, had discovered through hearings, that business enterprises had been utilized as a means for propagandizing, and that many persons including the petitioner here had published articles in various magazines, concealing their identity behind pseudonyms. The purpose of these activities, the Committee found, had been to influence "the policies, external and internal, of this country, through group action. They were employing the same method that they had employed in Germany for the purpose of obtaining control of the government over there."

foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment. No strained interpretation should frustrate its essential purpose.

Section 6 of the Act provides that "The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act." Congress did not set out in the Act the questions to be answered, and it surely did not intend to entrust the Secretary with no more than the power to copy the Act in seeking information. Such latitude as he has, the Secretary immediately used to require that "agents of foreign principals who engage, whether or not on behalf of their foreign principal," in political propaganda activity should register; and he asked the registrants to make a "comprehensive statement of nature of business." In view of the general purpose of the Act, such a question seems eminently reasonable. As a practical matter, the very fact that in the instant case it is extremely difficult to determine with conviction which activities the petitioner carried on in his own behalf and which he carried on in behalf of Germany is reason enough for requiring him to report on both. The Act did not contemplate that a foreign agent could evade its terms by claiming that all unreported political activities, upon their discovery by this government, were undertaken on his own behalf. Under the general power given the Secretary by § 6 to determine the form of questions, he was entitled to ask such questions as would make the enforcement of § 3(c) possible. I think the Secretary was authorized to ask the question under consideration in this case and that the Act required the petitioner to answer it.

As is pointed out in the opinion of the Court, the 1942 amendment to the Act explicitly authorizes the Secretary to ask the question which is involved in the instant case. The addition of this provision to the Act, however, I consider purely declaratory. The 1942 Bill was passed, as shown by the Senate and House reports, to serve four major purposes: It required the labeling of foreign propaganda mailed in the United States; transferred the administration of the Act from the Department of State to the Department of Justice; extended the application of the Act to certain propaganda affecting Latin America; and improved the enforcement provisions. The Attorney General, in expressing his views on

the bill, declared that the registration provisions of the amendment, which includes specific authorization to ask the very question now before us, were "merely declaratory".[3] If so, the Secretary had the authority to ask the same question under the 1938 Act.

The reversal here apparently does not rest on the concluding remarks of counsel for the government set forth in the Court's opinion. I am in accord with the sentiments expressed in *Berger* v. *United States*, 295 U. S. 78, 88, which the Court today repeats. In that case the Court declared that counsel had misstated the facts; put words into the mouths of witnesses which they had not said; intimated that statements had been made to him personally out of court in respect of which no proof was offered; pretended to understand that a witness had said something which he had not; bullied and argued with the witnesses; and committed other offenses. This Court properly declared that his conduct called for stern rebuke by the trial judge, for repressive measures, and "perhaps, if these were not successful, for the granting of a mistrial."

A prosecutor must draw a careful line. On the one hand, he should be fair; he should not seek to arouse passion or engender prejudice. On the other hand, earnestness or even a stirring eloquence cannot convict him of hitting foul blows.[4]

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[3] Sen. Report No. 913, 77th Cong., 1st Sess.

[4] "To shear him [the prosecutor] of all oratorical emphasis, while leaving wide latitude to the defense, is to load the scales of justice; it is to deny what has always been an accepted incident of jury trials, except in those jurisdictions where any serious execution of the criminal law has yielded to a ghostly phantom of the innocent man falsely convicted." Di Carlo v. United States, 6 F. 2d 364, 368.